

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VALVOLINE INSTANT OIL
CHANGE FRANCHISING, et al.,

Plaintiffs,

vs.

RFG OIL, INC.,

Defendant.

AND RELATED COUNTERCLAIM.

CASE NO. 12cv2079-GPC(KSC)

ORDER RE JOINT MOTION FOR
DETERMINATION OF DISCOVERY
DISPUTE

[Doc. No. 83.]

Before the Court is the parties' Joint Motion for Determination of Discovery Dispute. [Doc. No. 83.] In the Joint Motion, defendant RFG Oil, Inc. ("RFG") seeks an order compelling plaintiffs to supplement their responses to various requests for production of documents and to produce all responsive documents. For the reasons outlined below, the Court finds that defendant RFG's request must be GRANTED in part and DENIED in part.

Procedural and Factual Background

Plaintiffs Valvoline Instant Oil Change Franchising, Inc. ("VIOCF"); Ashland Consumer Markets, a commercial unit of Ashland, Inc. ("Ashland"); Ashland Licensing and Intellectual Property LLC ("ALIP"); Henley Enterprises, Inc.; Henley Pacific, LLC; Henley Pacific LA LLC; and Henley Pacific SD LLC ("Henley") filed a Complaint

1 against RFG on February 8, 2012. [Doc. No. 1.] On September 5, 2012, RFG answered
2 the Complaint and filed a Counterclaim against all plaintiffs. [Doc. No. 47.] On
3 October 10, 2012, plaintiffs filed a First Amended Complaint. [Doc. No. 59.] RFG filed
4 an Answer to the First Amended Complaint and a Counterclaim on October 19, 2012.
5 [Doc. No. 63.] RFG filed a First Amended Counterclaim on August 26, 2013. [Doc. No.
6 75.]

7 **A. The First Amended Complaint.**

8 The First Amended Complaint alleges: (1) trademark infringement of the We
9 Feature marks in violation of 15 U.S.C. § 1114; (2) trademark infringement of the
10 VIOCF marks in violation of 15 U.S.C. § 1114; (3) unfair competition in violation of
11 15 U.S.C. § 1125(a); (4) violation of California Business & Professions Code section
12 17200; (5) declaratory judgment that the We Feature Agreement is terminated;
13 (6) declaratory judgment that the Valvoline Group Agreements are terminated;
14 (7) breach of contract for liquidated damages under the We Feature Agreement;
15 (8) breach of contract for compensatory damages under the Valvoline Group
16 Agreements; (9) tortious interference with business expectancy as to Ashland and
17 VIOCF; (10) tortious interference with business expectancy as to Henley; and
18 (11) injunctive relief. [Doc. No. 59, at pp. 14-26.]

19 According to the First Amended Complaint, plaintiff VIOCF and defendant RFG
20 entered into certain renewable License Agreements and Sign and Equipment Leases that
21 became effective in 1990. These agreements allowed RFG to establish and operate a
22 number of Valvoline Instant Oil Change centers using the Valvoline Instant Oil Change
23 name and certain VIOCF trademarks. [Doc. No. 59, at p. 4.] At the same time, plaintiff
24 Ashland entered into related Supply Agreements with RFG to purchase Valvoline
25 products for use in operating the Valvoline Instant Oil Change centers. All of these
26 agreements are collectively referred to in the First Amended Complaint as the
27 “Valvoline Group Agreements.” [Doc. No. 59, at p. 5.]

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1 Plaintiffs VIOCF/Ashland terminated all of the Valvoline Group Agreements as
2 of November 30, 2011 for failure to pay amounts due under the Supply Agreements.
3 [Doc. No. 59, at p. 6.] As a result of this termination, RFG was no longer a Valvoline
4 franchisee. [Doc. No. 59, at p. 6.] However, at the time they terminated the Valvoline
5 Group Agreements, plaintiffs allege that RFG was offered a “new arrangement” known
6 as a “We Feature National Sales Account” in order to avoid litigation and other
7 problems. [Doc. No. 59, at pp. 7-8.] According to plaintiffs, the new We Feature
8 Agreement went into effect in December 2011. [Doc. No. 59, at p. 7.]

9 Under the new We Feature Agreement, RFG was allowed an opportunity to repay
10 the amounts owed under the prior Valvoline Group Agreements and to “feature” the
11 Valvoline brand at its service centers but without operating under the franchisee name
12 “Valvoline Instant Oil Change.” [Doc. No. 59, at p. 6.] The We Feature Agreement
13 required RFG to “purchase one-hundred percent (100%) of its requirements of bulk
14 motor oil” from Ashland for a period of three years. In addition, RFG was not
15 permitted to use or sell “any bulk products that are competitive with the Valvoline
16 brand.” [Doc. No. 59, at pp. 8, 12.] However, plaintiffs discovered soon after the We
17 Feature Agreement went into effect that RFG was purchasing bulk products from other
18 entities, commingling these non-Valvoline oil products with Valvoline products in bulk
19 storage tanks, and then telling customers they were selling “genuine Valvoline
20 product.” [Doc. No. 59, at p. 8.] As a result, plaintiffs claim they had a right to
21 terminate the We Feature Agreement immediately. [Doc. No. 59, at p 12-13.]

22 By letter dated February 3, 2012, RFG was notified that it was in breach of the
23 We Feature Agreement and was advised to “cease and desist” from commingling non-
24 Valvoline oil with Valvoline oil. [Doc. No. 59, at pp. 13-14.] RFG thereafter indicated
25 on February 7, 2012 that it intended to continue its practice of selling non-Valvoline oil
26 to customers. [Doc. No. 59, at p. 14.] As a result, plaintiffs believe they were entitled
27 to immediately terminate the We Feature Agreement. [Doc. No. 59, at p. 19-20.]

28 Plaintiff Henley also has a franchisee relationship with VIOCF and Ashland and

1 has a large number of Valvoline franchise sites in various parts of the United States.
2 [Doc. No. 59, at p. 24-25; Doc. No. 84, at p. 3; Doc. No. 75, at p. 5.] In 2008, Henley
3 became interested in acquiring 72 EZ Lube stores that had previously been in
4 bankruptcy. [Doc. No. 84, at p. 3.] In 2010, Henley began negotiating with Goldman
5 Sachs to acquire these EZ Lube stores. [Doc. No. 84, at p. 3; Doc. No. 84-1, at p. 8.] In
6 December 2011, Henley agreed to purchase the EZ Lube stores, and the transaction
7 closed in March 2012. [Doc. No. 84, at p. 4; Doc. No. 84-1, at pp. 8-9.]

8 The First Amended Complaint alleges that RFG “maliciously” interfered with
9 Henley’s business relationships with EZ Lube, Ashland, and VIOCF. [Doc. No. 59, at
10 pp. 9-10, 24-25.] Specifically, it is alleged that on February 3, 2012, RFG “maliciously
11 interfered” with Henley’s business expectancy with Ashland and VIOCF by sending a
12 letter to Ashland and VIOCF demanding that they “cease and desist from any and all
13 further communications with Henley regarding the purchase and operation of the EZ
14 Lube service centers.” [Doc. No. 59, at pp. 24-25.] In addition, on February 6, 2012, it
15 is alleged that RFG “maliciously interfered with Henley’s contractual relationship with
16 EZ Lube and its business expectancy with Ashland and VIOCF by sending a letter to
17 Henley demanding that Henley cease and desist from any and all further
18 communications with Ashland, VIOCF and EZ Lube regarding the purchase and
19 operation of the EZ Lube service centers.” [Doc. No. 59, at pp. 24-25.]

20 ***B. Plaintiffs’ Motion for Partial Summary Judgment.***

21 On March 31, 2014, plaintiffs filed a Motion for Partial Summary Judgment.
22 [Doc. No. 87.] In this Motion, plaintiffs sought summary adjudication of the fifth and
23 six causes of action in the First Amended Complaint. [Doc. No. 96, at p. 2.] These
24 causes of action seek a declaration by the District Court that plaintiff VIOCF and
25 Ashland properly terminated the Valvoline Group Agreements (Count VI) and the We
26 Feature Agreement (Count V) because defendant RFG breached various terms of these
27 agreements. [Doc. No. 59, at pp. 19-20.]

28 Defendant RFG opposed plaintiffs’ Motion for Partial Summary Judgment,

1 arguing that: (1) the Valvoline Group Agreements were improperly terminated because
 2 RFG cured any breach by making weekly payments toward outstanding invoices; and
 3 (2) the We Feature Agreement is unenforceable because it was never fully and
 4 completely executed. [Doc. No. 96, at pp. 7, 10, 12.] On June 4, 2014, the District
 5 Court issued an Order denying plaintiffs' Motion for Partial Summary Judgment,
 6 because plaintiffs failed to demonstrate there were no material issues of fact for trial on
 7 these two causes of action for declaratory relief. [Doc. No. 96, at p. 14.]

8 The District Court's Order of June 4, 2014, denying plaintiffs' Motion for
 9 Summary Judgment states that the following facts are undisputed:

10 Plaintiffs and RFG were engaged in a franchisor/franchisee
 11 relationship for over 20 years where RFG branded its 44 oil change
 12 facilities with Valvoline trademarks and purchased Valvoline branded
 13 products. Each facility was governed by virtually identical sets of
 14 franchise agreements. (Dkt. No. 88, McKeown Decl., Exs. A, B.) The
 15 relevant agreements are the Licensee Supply Agreement between Ashland
 16 Consumer Markets and RFG; and the Renewal License Agreement
 17 between Valvoline Instant Oil Change Franchising, Inc. and RFG. (*Id.*)
 18 Pursuant to the Renewal License Agreement, VIOCF promised not to
 19 grant a license to another Valvoline franchisee within a two mile radius of
 20 the store to which the License Agreement pertained. (*Id.*, Ex. B., Renewal
 21 License Agreement § 1.3.)

22 From November 17, 2010 to November 24, 2010, RFG placed
 23 product orders that resulted in invoices totaling \$387,738.32. (Dkt. No.
 24 87-4, Nolan Decl. ¶ 3, Ex. A.) Then between November 29, 2010 through
 25 December 22, 2010, RFG placed additional product orders with an invoice
 26 of \$118,415.35. (*Id.*) At that time, RFG was on a "Net 45-day" payment
 27 term which means that payments of orders are due on average 45 days
 28 after they are placed. (*Id.* ¶ 4.) Any products invoiced on or before the
 25th of every month would be due the following month on the 25th. (*Id.*;
 Dkt. No. 93-2, Gong Decl. ¶ 13.) As applied to RFG's invoices, orders
 placed from November 17-24, 2010 totaling \$387,738.32 were due by
 December 25, 2010 and orders placed from November 29- December 22,
 2010 totaling \$118,415.34 were due on January 25, 2011. (Dkt. No. 87-4,
 Nolan Decl. ¶ 4.) It is undisputed that RFG did not make full payment of
 the amounts due on December 25, 2010. (Dkt. No. 93-2, Gong Decl. ¶ 20;
 Dkt. No. 84-4, Nolan Decl. ¶ 5.)

Consequently, on January 28, 2011, Plaintiffs issued a "Notice of
 Default and Potential Termination" letter to RFG. (Dkt. No. 88, McKeown
 Decl., Ex. C.) Without waiving any of its rights, VIOCF granted RFG
 additional time to cure its breaches by providing payment

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1 extensions, and other opportunities to cure. (*Id.* ¶ 7; Dkt. No. 93-3, Lea
2 Decl., Exs. 6, 7.) Then on November 30, 2011, VIOCF sent RFG a
3 Confirmation of Termination Notice, which was later revised on
4 December 5, 2011. (Dkt. No. 88, McKeown Decl. ¶ 8, Exs. D, E.)

5 The Revised Confirmation of Termination terminated the license
6 agreements effective November 30, 2011 and sought damages under the
7 contract totaling over \$14,610,680.10. (*Id.*, Ex. D.) However, Plaintiffs
8 were willing to settle the matter and temporarily forego enforcement
9 remedies, as well as forego early termination fees if RFG entered into a
10 new “We Feature” Agreement and the required attached General Release.
11 (*Id.*, Exs. D, F.) Under the We Feature agreement, RFG would continue to
12 operate its various locations and would continue to sell exclusively
13 Valvoline products, but would de-brand its facilities and no longer be
14 required to pay royalties and other fees associated with being a franchisee.
15 (Dkt. No. 88, McKeown Decl. ¶ 9.) RFG was required to buy specified
16 products from Valvoline and ‘not sell any bulk products which are not
17 Valvoline brand bulk products.’ (*Id.*, Ex. F. § 4.) It also required RFG to
18 ‘not alter in composition, commingle with products from other sources, or
19 otherwise adulterate the Products.’ (*Id.*, Ex. F § 8.) On February 8, 2012,
20 Plaintiffs sent Defendant a Notice of Termination of the We Feature
21 National Account Sales Agreement. (*Id.*, Ex. J.) The parties present
22 different factual versions of the reasons for termination. (*Id.*, Ex. J; Dkt.
23 No. 93-2, Gong Decl. ¶¶ 38-39.)

24 [Doc. No. 96, at pp. 3-6.]

25 As to the fifth and sixth causes of action for declaratory relief in the First
26 Amended Complaint, the District Court concluded there were genuine issues of material
27 fact as to the following: (1) whether the alleged default of the Valvoline Group
28 Agreements was cured by RFG with payments made between January and March 2011
[Doc. No. 96, at p. 11]; (2) whether plaintiffs VIOCF and Ashland performed under the
Valvoline Group Agreements when they required RFG to pay for supplies in advance;
(3) whether plaintiffs VIOCF and Ashland breached the Valvoline Group Agreements
by failing to provide RFG with promised financial incentives and funds for new signs
and other equipment [Doc. No. 96, at pp. 11-12]; (4) whether plaintiffs properly
terminated the License Supply Agreement and the Renewed License Agreement [Doc.
No. 96, at p. 12]; and (5) whether the We Feature Agreement and related General
Release are enforceable [Doc. No. 96, at pp. 14-15].

29 ***C. RFG’s First Amended Counterclaim.***

30 RFG’s First Amended Counterclaim alleges: (1) breach of contract as to VIOCF,
31 Ashland, and ALIP; (2) declaratory relief as to VIOFF, Ashland, and ALIP that the

1 Valvoline Agreements are enforceable; (3) declaratory relief as to VIOCF, Ashland, and
2 ALIP that the We Feature Agreement is unenforceable; (4) intentional interference with
3 prospective economic advantage as to VIOCF, Ashland, and ALIP; (5) fraudulent
4 misrepresentation against VIOCF, Ashland, and ALIP; (6) misappropriation of trade
5 secrets against VIOCF, Ashland, and ALIP; (7) intentional interference with
6 prospective economic advantage as to Henley; and (8) breach of confidence as to
7 Henley. [Doc. No. 75, at pp. 10-18.]

8 In the First Amended Counterclaim, RFG alleges that VIOCF and Henley
9 conspired to force RFG and its Valvoline service centers out of the Southern California
10 market. [Doc. No. 75, at pp. 3-9.] In 2010, as part of the alleged conspiracy, Henley,
11 with VIOCF's knowledge and assistance, began negotiating with RFG to purchase
12 RFG's Valvoline locations. [Doc. No. 75, at p. 6.] However, RFG later realized that
13 Henley was not negotiating in good faith and simply wanted to acquire RFG's locations
14 at the lowest possible cost. [Doc. No. 75, at pp. 6-9.] Henley also wanted to acquire
15 competing EZ-Lube service centers, some of which were located within RFG's
16 exclusive territory, and then convert them to Valvoline service centers. [Doc. No. 75,
17 at p. 5.] According to RFG's First Amended Counterclaim, VIOCF encouraged Henley
18 to pursue the purchase of EZ Lube locations even though this would have violated
19 VIOCF's exclusivity agreement with RFG. [Doc. No. 75, at pp. 4-6.] To bypass this
20 exclusivity provision and to help Henley purchase RFG's locations at the lowest
21 possible price, RFG believes that VIOCF purposely caused financial hardship to RFG,
22 provided Henley with RFG's confidential business information, and reneged on
23 promises to provide RFG with substantial financial assistance and incentives. RFG
24 further alleges that Henley and VIOCF provided Henley with "substantial financial
25 assistance to purchase the 72 EZ Lube locations." [Doc. No. 75, at p. 8.]

26 In February 2012, RFG claims it learned that Henley, with alleged financial
27 assistance from VIOCF, was about to close on an agreement to purchase 72 EZ Lube
28 locations and no longer wished to pay for the acquisition of RFG's service centers.

1 According to RFG, "Henley intentionally disrupted RFG's license agreements by
2 conspiring with VIOCF to cause VIOCF to terminate RFG license agreements so that
3 Henley could open new locations that would have otherwise violated RFG's license
4 agreement with VIOCF." [Doc. No. 75, at p. 17.]

5 RFG also alleges in the First Amended Counterclaim that VIOCF and Ashland
6 improperly terminated the RFG license agreements, and then wanted RFG to execute
7 a "We Feature Agreement," which would have allowed its service centers to carry
8 Valvoline products without being a franchisee. [Doc. No. 75, at pp. 5-8.] However,
9 RFG claims that it never executed a final "We Feature Agreement." [Doc. No. 75, at 8-
10 9.]

11 On or about February 6, 2012, RFG advised VIOCF, Ashland, and Henley by
12 letter that, as a Valvoline franchisee, RFG had substantial rights which would be
13 violated by Henley's acquisition of the EZ Lube locations. On February 8, 2011, two
14 days after receiving RFG's letter, VIOCF, Ashland, and Henley filed this lawsuit
15 against RFG. [Doc. No. 75, at p. 9.]

16 Discussion

17 The scope of discovery under Rule 26(b) is broad: "Parties may obtain discovery
18 regarding any matter, not privileged, which is relevant to the claim or defense of any
19 party involved in the pending action. Relevant information need not be admissible at
20 trial if the discovery appears reasonably calculated to lead to the discovery of
21 admissible evidence." Fed.R.Civ.P. 26(b). However, a court may limit discovery of
22 relevant material if it determines that the discovery sought is unreasonably cumulative
23 or duplicative, or obtainable from some other source that is more convenient, less
24 burdensome, or less expensive, or the burden or expense of the proposed discovery
25 outweighs the likely benefit. The party resisting discovery generally bears the burden
26 to show that the discovery requested is irrelevant to the issues in the case or is overly
27 broad, unduly burdensome, unreasonable, or oppressive. If the resisting party meets

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1 its burden, the burden shifts to the moving party to show the information is relevant and
 2 necessary. *Henderson v. Holiday CVS, L.L.C.*, 269 F.R.D. 682, 686 (2010).

3 **A. VIOCF/Ashland Correspondence re EZ Lube Acquisition.**

4 Defendant RFG's Document Request Nos. 74, 75, 76, and 77 to VIOCF and
 5 Nos. 1, 2, 3, and 4 to Ashland all seek correspondence between VIOCF and/or Ashland
 6 and Henley or any other person or entity related to Henley's acquisition of EZ Lube
 7 stores in Southern California. [Doc. No. 83, at pp. 2-13.] VIOCF and Ashland objected
 8 to these requests on various grounds, including relevance, confidentiality, attorney-
 9 client privilege, and attorney work product. *Id.* Despite the assertion of the attorney-
 10 client privilege, it does not appear that plaintiffs produced a privilege log.¹

11 VIOCF and Ashland have represented in the Joint Motion and in supplemental
 12 responses to RFG's document requests that they have made a reasonable inquiry and
 13 a diligent search but there are no responsive documents or all responsive documents
 14 have been produced. [Doc. No. 83, at pp. 2-7, 8-13.] RFG has not provided the Court
 15 with any reason to believe that all responsive documents have not been produced. As
 16 a result, it is unclear why these document requests were included in the final version of
 17 the parties' Joint Motion or why the Court was required to spend time reviewing the
 18 parties' arguments as there is no discovery dispute to resolve. In other words, RFG has
 19 not established that it is entitled to an order compelling further responses to Document
 20 Request Nos. 74, 75, 76, and 77 to VIOCF and Nos. 1, 2, 3, and 4 to Ashland.

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 24 ¹ "When a party withholds information otherwise discoverable by claiming
 25 that the information is privileged . . . , the party must: (i) expressly make the claim; and
 26 (ii) describe the nature of the documents, communications, or tangible things not
 27 produced or disclosed—and do so in a manner that, without revealing information itself
 28 privileged or protected, will enable other parties to assess the claim." Fed.R.Civ.P.
 26(b)(5)(A). "[B]oilerplate objections or blanket refusals inserted into a response to a
 Rule 34 request for production of documents are insufficient to assert a privilege."
Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court, Dist. of Mont., 408 F.3d
 1142, 1149 (9th Cir. 2005). A privilege may be waived if a privilege log is not produced
 in a timely manner. *Id.* at 1149-1150.

1 **B. The Franchise Disclosure Document.**

2 RFG's Request for Production No. 82 to VIOCF and Request for Production
3 No. 9 to Ashland seek: "The Franchise Disclosure Document (as referenced in VIOCF
4 document number 000019)." [Doc. No. 83, at pp. 7, 13.] VIOCF and Ashland objected
5 to these requests as burdensome and harassing because RFG already has a copy of this
6 document. *Id.* The reason for RFG's request is that the Franchise Disclosure Document
7 was referenced in a letter produced by VIOCF that is Bate-stamped "000019." [Doc.
8 No. 83, at pp. 7, 13.] Although RFG concedes that it may already have a copy of the
9 Franchise Disclosure Document, it "wants to ensure that its copy, and the one
10 referenced in the letter, . . . are the same document." [Doc. No. 83, at pp. 7, 13.] VIOCF
11 and Ashland agreed to produce this document after meeting and conferring with RFG.
12 However, in the parties' Joint Motion, VIOCF and Ashland only represented that they
13 "will" produce the document. In other words, the record does not indicate that the
14 document was actually produced. [Doc. No. 83, at pp. 7-8, 14.] As a result, it is unclear
15 whether the parties' dispute over this document is resolved. Therefore, the Court finds
16 that RFG is entitled to an order compelling VIOCF and Ashland to produce the
17 Franchise Disclosure Document referenced in VIOCF's Document No. 000019 to the
18 extent they have not already done so.

19 **C. Henley's EZ Lube Acquisition Negotiations in 2007 and 2008.**

20 Defendant RFG's Document Request No. 57 seeks all documents "from 2007 to
21 2008 that relate or pertain to a possible transaction between [Henley] and the owner of
22 a chain of EZ Lube stores in Southern California for [Henley's] possible acquisition of
23 [these stores] (as referenced in VIOCF Doc. No. 001044)." [Doc. No. 83, at p. 14.]
24 Essentially, RFG seeks access to these documents, because plaintiffs have alleged that
25 RFG interfered with Henley's acquisition of the EZ Lube stores from Goldman Sachs.
26 [Doc. No. 83, at pp. 14-15] In addition, RFG argues that these documents are relevant
27 to its First Amended Counterclaim, because they may support its theory that Henley's
28 acquisition of the EZ Lube stores in 2012 was part of a conspiracy between Henley,

1 VIOCF, and Ashland to force RFG out of the Southern California market. [Doc. No.
2 83, at pp. 14-15.] Plaintiffs argue that these documents are irrelevant because they date
3 back five years before Henley actually acquired the EZ Lube stores in 2011 from its
4 new owner, Goldman Sachs. [Doc. No. 83, at p. 14-15; Doc. No. 84, at pp. 1-6; Doc.
5 No. 84-1, at pp. 2-3, Doty Decl.] The record supports plaintiffs' contention that the
6 documents sought in response to Request No. 57 do not meet the relevance standard of
7 Rule 26.

8 As referenced in Document Request No. 57, "VIOCF Doc. No. 001044" refers
9 to part of an Affidavit signed by Donald R. Smith, who is Henley's founder and chief
10 executive officer. Plaintiffs submitted a copy of Mr. Smith's Affidavit in connection
11 with the parties' Joint Motion. [Doc. No. 84-1, Doty Decl., at pp. 2-3.] The Affidavit
12 states in part as follows: "While discussions with [RFG] about the possible acquisition
13 of RFG were proceeding, Affiant began discussions in the fall of 2007 about a possible
14 transaction between Henley and the owner of a chain of EZ Lube stores in the southern
15 California area . . . whereby Henley would acquire the stores. EZ Lube filed for
16 bankruptcy protection in December 2008. Upon emerging from bankruptcy, it was
17 controlled by Goldman Sachs, its former secured lender, as its preferred member."
18 [Doc. No. 84-1, at p. 8.] This Declaration also indicates that in 2010, Henley took steps
19 to acquire the EZ Lube stores from Goldman Sachs. [Doc. No. 84-1, at p. 8.] Henley
20 negotiated the exact terms of an Asset Purchase Agreement for the EZ Lube stores with
21 Goldman Sachs "[f]rom September through December 2011." [Doc. No. 84-1, at p. 9.]
22 The Asset Purchase Agreement was signed on or about December 18, 2011, and
23 Henley's acquisition of the EZ Lube stores from Goldman Sachs closed on March 8,
24 2012. [Doc. No. 84-1, at p. 9.]

25 RFG has not adequately explained the relevance of Henley's failed negotiations
26 in 2007 and 2008 to purchase EZ Lube stores in Southern California from its prior
27 owner. Without more, these negotiations are simply too attenuated from the allegations
28 in the First Amended Complaint and the First Amended Counterclaim to meet the

1 relevance standard of Rule 26. As a result, the Court finds that RFG is not entitled to
2 an order compelling Henley to supplement its response or produce documents in
3 response to Document Request No. 57.

4 ***D. EZ Lube Bankruptcy Documents.***

5 Defendant RFG's Document Request No. 58 to Henley seeks: "Any and all
6 documents that relate or pertain to the EZ Lube bankruptcy filed in or about
7 December 2008 (as referenced in VIOCF document number 001044)." Plaintiffs object
8 to this request as overly broad, burdensome, and harassing, because it seeks public
9 documents from court records that are equally available to all parties. Plaintiffs
10 objections are sustained.

11 First, when documents of public record are "equally accessible" to all parties, it
12 is not necessary for the Court to order production. *Krause v. Buffalo and Erie Cnty.*
13 *Workforce Dev. Consortium*, 425 F.Supp.2d 352, 374-375 (W.D.N.Y. 2006). Second,
14 RFG states in the Joint Motion that the request only seeks documents that would not be
15 available in the public record, such as correspondence. However, the wording of this
16 request is so broad that it could only be read to include the entire bankruptcy court
17 record, which may or may not be within Henley's possession, custody or control, plus
18 any documents Henley may have generated or received about the bankruptcy before and
19 during its negotiations for the acquisition of the EZ Lube stores. There is nothing in the
20 Joint Motion to indicate that RFG made any attempt to narrow the request to non-public
21 documents during meet and confer sessions.

22 Without more, it also appears that the relevance of the EZ Lube bankruptcy is too
23 attenuated from the allegations at issue in this case to meet the relevance standard of
24 Rule 26. As outlined above, Henley has stated that it had discussions about a possible
25 acquisition of EZ Lube stores in Southern California in the fall of 2007. However, EZ
26 Lube filed for bankruptcy protection in December 2008. [Doc. No. 84-1, at p. 8, Smith
27 Decl.] "Upon emerging from bankruptcy, it was controlled by Goldman Sachs, its
28 former secured lender, as its preferred member." *Id.* Henley then began negotiations

1 with Goldman Sachs to acquire the EZ Lube stores in 2010, and the acquisition was
 2 completed on March 8, 2012. [Doc. No. 84, at p. 3; Doc. No. 84-1, at p. 8-9.] For the
 3 reasons outlined above, it is clear that Henley's later negotiations with Goldman Sachs
 4 in 2010 and 2011 and its ultimate acquisition of EZ Lube stores from Goldman Sachs
 5 on March 8, 2012 are relevant to matters at issue in this lawsuit. However, RFG has not
 6 adequately explained the relevance of the EZ Lube bankruptcy in 2008. Without more,
 7 the EZ Lube bankruptcy is simply too attenuated from the allegations in the First
 8 Amended Complaint and the First Amended Counterclaim to meet the relevance
 9 standard of Rule 26. Therefore, under the circumstances presented, the Court finds that
 10 defendant RFG is not entitled to an order compelling Henley to provide a further
 11 response to Document Request No. 58.

12 ***D. Documents re Henley's Acquisition of the EZ Lube Stores.***

13 Defendant RFG's Document Request Nos. 59, 60, 61, 62, 63, 64, 65, 66, 67, 68,
 14 and 69 all seek the production of documents from Henley concerning its acquisition of
 15 72 EZ Lube stores in March 2012. These requests seek the following:

- 16 • Without limitation as to time, all written communications between Henley
 17 and Goldman Sachs regarding the Southern California EZ Lube stores
 18 [Doc. Req. No. 59];
- 19 • All documents from 2009 to July 2011 that relate or pertain to discussions
 20 between Henley and Goldman Sachs and/or EZ Lube regarding Henley's
 21 acquisition of EZ Lube stores in Southern California (as referenced in
 22 VIOCF Doc. No. 001044-45) [Doc. Req. Nos. 60 and 61];
- 23 • Without limitation as to time, any documents pertaining or relating to the
 24 financial terms of Henley's acquisition of EZ Lube stores (as referenced
 25 in VIOCF Doc. No. 001045), including all correspondence on this subject
 26 between Henley and VIOCF [Doc. Req. Nos. 62 and 64];

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- 1 • All correspondence from 2009 to July 2011 between Henley and VIOCF
- 2 relating or pertaining to Henley's possible acquisition of EZ Lube stores
- 3 in Southern California [Doc. Req. No. 63];
- 4 • All documents from September 2011 through December 2011 relating or
- 5 pertaining to negotiations on the exact terms of the Asset Purchase
- 6 Agreement for the EZ Lube stores [Doc. Req. No. 65];
- 7 • Without limitation as to time, any correspondence between Henley and
- 8 VIOCF relating or pertaining to the negotiations for the exact terms of the
- 9 Asset Purchase Agreement for the EZ Lube stores (as referenced in
- 10 VIOCF Doc. No. 001045) [Doc. Req. No. 66];
- 11 • A copy of the Asset Purchase Agreement between Henley and EZ Lube
- 12 that was signed on or about December 18, 2011 [Doc. Req. No. 67];
- 13 • Without limitation as to time, all correspondence between Henley and any
- 14 other person or entity related to the March 8, 2012 closing of the EZ Lube
- 15 acquisition [Doc. No. 68]; and
- 16 • All documents relating or pertaining to any escrow for the March 8, 2012
- 17 closing of the EZ Lube acquisition [Doc. Req. No. 69].

18 [Doc. No. 83, at pp. 14-34.]

19 Henley objected to these requests on various grounds, including relevance,
 20 confidentiality, attorney-client privilege, and work product protection. Despite an
 21 objection based on the attorney-client privilege, it does not appear that Henley produced
 22 a privilege log. In addition, Henley complains that these requests are overly
 23 burdensome and harassing. [Doc. No. 83, at pp. 14-34.]

24 RFG argues that the documents related to the EZ Lube acquisition are relevant
 25 because: (1) Henley alleges in Count 10 of the First Amended Complaint that RFG
 26 "maliciously interfered with Henley's business expectancy with Ashland and VIOCF
 27 by . . . demanding that they cease and desist from any and all further communications
 28 with Henley regarding the purchase and operation of the EZ Lube service centers";

1 (2) Henley further alleges in Count 10 of the First Amended Complaint that RFG
2 “maliciously interfered with Henley’s contractual relationship with EZ Lube and its
3 business expectancy with Ashland and VIOCF . . . regarding the purchase and operation
4 of the EZ Lube service centers”; (3) VIOCF and Ashland allege in Count 11 of the First
5 Amended Complaint that “RFG maliciously interfered with Ashland’s business
6 expectancy by . . . demanding that Henley cease and desist from any and all further
7 communications with Ashland and VIOCF regarding the purchase and operation of the
8 EZ Lube service centers”; and (4) VIOCF and Ashland further allege in Count 11 of the
9 First Amended Complaint that RFG “attempted to prevent Henley from finalizing the
10 purchase of certain EZ Lube service centers . . .” and this was done “maliciously for the
11 purpose of interfering with Ashland’s contractual relationship and expectancy with
12 Henley.” [Doc. No. 59, at pp. 23-24.]

13 RFG also argues that the requested documents about Henley’s acquisition of the
14 EZ Lube service centers are relevant to its allegations in its First Amended
15 Counterclaim. As noted above, the First Amended Counterclaim alleges that VIOCF
16 and Ashland conspired with Henley to force RFG out of the market. As part of this
17 alleged conspiracy, RFG claims that VIOCF provided Henley with “substantial
18 assistance to purchase the 72 EZ Lube locations” even though some of these locations
19 were within RFG’s exclusive territory pursuant to the Valvoline Group Agreements.
20 [Doc. No. 75, at pp. 4-8.] In Count 7 of the First Amended Counterclaim, RFG alleges
21 that Henley maliciously and “intentionally disrupted RFG’s license agreements by
22 conspiring with VIOCF to cause VIOCF to terminate RFG license agreements so that
23 Henley could open new locations that would have otherwise violated RFG’s license
24 agreements with VIOCF.” [Doc. No. 75, at p. 18.]

25 RFG believes that the EZ Lube acquisition documents would be helpful in
26 establishing the precise time line of events leading up to Henley’s acquisition of EZ
27 Lube stores in Southern California and the relationship of this transaction to the adverse
28 actions allegedly taken by VIOCF and Ashland against RFG. In addition, RFG believes

1 the requested documents would support allegations in its First Amended Counterclaim
2 by showing that VIOCF and/or Ashland knew about the progress of the EZ Lube
3 acquisition and were motivated to take action against RFG and to enter into a
4 conspiracy with Henley, because they had a financial interest in Henley's acquisition
5 of the EZ Lube stores and in eliminating RFG as a competitor. [Doc. No. 83, at pp. 14,
6 16, 17, 19, 21-22, 24, 26, 27-28, 29, 30.] Thus, RFG has established the relevance of
7 the requested documents under Rule 26.

8 Plaintiffs argue that the requested documents are not relevant and they should not
9 be compelled to produce them, because they would not be helpful in establishing a time
10 line linking the EZ Lube acquisition with actions taken by VIOCF and Ashland against
11 RFG. According to plaintiffs, there is "simply no connection" between Henley's
12 acquisition of the EZ Lube locations and VIOCF's motivations for terminating the
13 Valvoline Group Agreements. [Doc. No. 83, at p. 15.] Plaintiffs contend they have
14 already produced documents establishing that their motive for terminating the Valvoline
15 Group Agreements was RFG's default and failure to pay for products for nearly a year.
16 Nor do plaintiffs believe the financial aspects of the EZ Lube acquisition could establish
17 a connection between this transaction and the adverse actions taken by VIOCF and
18 Ashland against RFG. [Doc. No. 83, at pp. 15, 18, 20, 22-23, 24-25, 26-27, 28.]
19 Plaintiffs also contend that many of the documents are irrelevant because they would
20 not show VIOCF's knowledge about the EZ Lube acquisition. [Doc. No. 83, at pp. 15,
21 18, 24.]

22 In support of their arguments, plaintiffs cite a Declaration by Donald R. Smith,
23 Henley's chief executive officer, which states, in part, that Henley's "efforts to expand
24 its operations were *independent of and without the advice of Valvoline*." [Doc. No. 83,
25 at pp. 15, 18, 20, 22-23, 24-25, 26-27, 28 (emphasis in original).] However, plaintiffs
26 arguments and Mr. Smith's Declaration are not enough for plaintiffs to meet their
27 burden of showing that the requested documents are irrelevant. In alleging interference
28 by RFG with the EZ Lube acquisition, plaintiffs placed this transaction at issue. As

1 noted above, the scope of discovery is broad, and the documents requested by RFG
2 appear “reasonably calculated to lead to the discovery of admissible evidence.”
3 Fed.R.Civ.P. 26(b). RFG is entitled to test Mr. Smith’s vague representation about
4 Henley’s operations and to pursue its theory of the case against all of the plaintiffs.
5 RFG is also entitled to discover documents that could support the allegations in its First
6 Amended Counterclaim that the timing of adverse actions taken against it by
7 VIOCF/Ashland and Henley’s purchase of the EZ Lube stores were part of a conspiracy
8 to force RFG out of the Southern California market. [Doc. No. 75, at pp. 10-18.]
9 Therefore, the Court finds that RFG’s Document Request Nos. 59, 60, 61, 62, 63, 64,
10 65, 66, 67, 68, and 69 seek the production of documents that meet the relevance
11 standard of Rule 26. As a result, RFG is entitled to an order compelling Henley to
12 produce documents responsive to these requests.

13 On the other hand, the Court agrees with plaintiffs that Document Request Nos.
14 59, 62, 64, 65, and 68 are overly burdensome because plaintiffs have not limited these
15 requests as to time. The time period at issue is from 2010, when Henley has stated that
16 it began negotiations with Goldman Sachs for the purchase of EZ Lube locations,
17 through March 8, 2012, when Henley has stated that the EZ Lube acquisition closed.
18 [Doc. No. 84-1, at p. 8-9.] As a result, the Court finds that Henley’s responses to these
19 requests must be limited to this relevant time period.

20 As to Request No. 66, which seeks correspondence between Henley and VIOCF
21 relating or pertaining to the EZ Lube negotiations, Henley has stated that it “does not
22 have any documents responsive to this request” and “will provide a Supplemental
23 Response to this Request so stating.” [Doc. No. 83, at p. 30.] However, there is nothing
24 to confirm that Henley actually provided this Supplemental Response. RFG is therefore
25 entitled to an order compelling Henley to supplement its response to Request No. 66
26 and to produce all responsive documents, if any.

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28 ///

1 ***E. Documents Relevant to Henley’s Claimed Damages.***

2 With respect to Document Request Nos. 59, 62, 68, and 69, plaintiffs argue that
 3 any documents responsive to these requests would only be relevant and discoverable
 4 to the extent they relate to Henley’s damages based on its allegation that RFG’s conduct
 5 in February 2012 interfered with the closing of the EZ Lube acquisition. However,
 6 plaintiffs’ objections and arguments suggest Henley may be withholding responsive
 7 documents only because RFG never offered to narrow the scope of these requests to
 8 damages. [Doc. No. 83, at pp. 18, 21, 23, 25.] Plaintiffs have made a similar argument
 9 as to other document requests, including Request Nos. 60, 61, 64, and 65. As to
 10 Request Nos. 60 and 61, plaintiffs further argue that “[t]his request does not call for the
 11 production of such documents.” [Doc. No. 83, at pp. 21, 23.] In response to Request
 12 Nos. 64, 65, and 67, Henley has stated that it “will” produce responsive documents
 13 relevant to its claimed damages, but there is nothing to confirm that Henley has actually
 14 done so. [Doc. No. 83, at p. 28.] The Court finds that these arguments must be rejected
 15 as vague and ambiguous.

16 First, any responsive documents relevant to RFG’s alleged damages should have
 17 been produced long ago as part of Henley’s initial disclosures. In this regard, Rule
 18 26(a)(1)(A)(iii) states in part as follows: “[A] party must, without awaiting a discovery
 19 request, provide to the other parties: . . . (iii) a computation of each category of
 20 damages claimed by the disclosing party—who must also make available for inspection
 21 and copying as under Rule 34 the documents or other evidentiary material, unless
 22 privileged or protected from disclosure, on which each computation is based, including
 23 materials bearing on the nature and extent of injuries suffered. . . .” Fed.R.Civ.P.
 24 26(a)(1)(A)(iii). In addition, Rule 37(c)(1) states in part as follows: “If a party fails to
 25 provide information . . . as required by Rule 26(a) or (e), the party is not allowed to use
 26 that information . . . to supply evidence on a motion, at a hearing, or at a trial, unless the
 27 failure was substantially justified or is harmless.” Fed.R.Civ.P. 37(c)(1). Other
 28 sanctions may also be imposed under Rule 37 for a party’s failure to provide

1 information as required by Rule 26(a) or (e). Fed.R.Civ.P. 37(c)(1)(A)(B)&(C). In this
 2 case, initial disclosures were scheduled for completion no later than March 15, 2013.
 3 [Doc. No. 69, at p. 1.] Thus, to the extent plaintiffs' responses and arguments as to
 4 Document Request Nos. 59, 60, 61, 62, 64, 65, 68, and 69 indicate that Henley is
 5 withholding responsive documents relevant to its claimed damages, it has done so
 6 without justification and at its own peril.

7 Second, RFG's failure to narrow the scope of any of its document requests to
 8 apply only to documents related to damages is not a valid excuse for Henley to refuse
 9 to produce responsive, relevant documents. Since they are so obviously relevant, any
 10 non-privileged documents relevant to the issue of Henley's claimed damages should
 11 have been produced in response to these requests regardless of whether the requests are
 12 broad enough to include other documents that Henley believes are not relevant under
 13 the standards set forth in Rule 26. Therefore, for these additional reasons, the Court
 14 finds that RFG is entitled to an order compelling Henley to supplement its responses
 15 and produce all responsive documents to Request Nos. 59, 60, 61, 62, 64, 65, 68, and
 16 69.

17 ***F. Confidentiality.***

18 Plaintiffs also argue that the Court should not compel them to produce documents
 19 pertaining to the EZ Lube acquisition because the parties to the transaction are bound
 20 by a "Nondisclosure Agreement," which "reflects an intention on the part of the parties
 21 to maintain the confidentiality of the transaction." [Doc. No. 83, at p. 24.] Because they
 22 contend the requested documents are irrelevant to the issues in this lawsuit, plaintiffs
 23 claim there is no basis for overriding the alleged Nondisclosure Agreement. [Doc. No.
 24 83, at pp. 17, 20.]² Based on the foregoing, this Court disagrees. Documents related to
 25 the EZ Lube acquisition are relevant to key issues in the case, especially since Henley
 26 has alleged in the First Amended Complaint that RFG "maliciously" interfered with the

27
 28 ² In support of this argument, Henley submitted page 1 only of a 6-page
 Nondisclosure Agreement between Henley and EZ Lube that is dated September 7,
 2011. [Doc. No. 84-1, at p. 14, Ex. C, Doty Decl.]

1 EZ Lube acquisition. [Doc. No. 59, at pp. 24-25.] Under these circumstances, Henley
 2 cannot simply avoid its discovery obligations under the Federal Rules of Civil
 3 Procedure by referencing a Nondisclosure Agreement that admittedly “expired upon
 4 close of the transaction.” [Doc. No. 84, at p. 24.] To the extent Henley believes it has
 5 a continued interest in maintaining the confidentiality of any of the documents related
 6 to the EZ Lube acquisition, it must seek a protective order from the Court and show
 7 good cause under Rule 26(b) or simply negotiate a stipulated
 8 protective order with RFG and the other parties in the case and then take responsibility
 9 for drafting one to be submitted to the Court for approval.³ In drafting a proposed
 10 stipulated protective order, the parties should refer to the requirements set forth in Judge
 11 Crawford's "Chambers' Rules" which are accessible via the Court's website at
 12 www.casd.uscourts.gov.

13 Conclusion

14 Based on the foregoing, IT IS HEREBY ORDERED THAT defendant RFG's
 15 request for an order compelling plaintiffs to provide further responses to certain
 16 requests for production of documents and to produce documents pursuant to Federal
 17 Rules of Civil Procedure 26 and 34 must be GRANTED in part and DENIED in part as
 18 follows:

19 1. Defendant RFG's request for an order compelling VIOCF to provide
 20 further responses to Document Request Nos. 74, 75, 76, and 77 is DENIED.

21 2. Defendant RFG's request for an order compelling Ashland to provide
 22 further responses to Document Request Nos. 1, 2, 3, and 4 is DENIED.

23 3. Defendant RFG's request for an order compelling a further response to
 24 Request for Production No. 82 to VIOCF and Request for Production No. 9 to Ashland
 25 is GRANTED. To the extent they have not already done so, plaintiffs VIOCF and/or
 26 Ashland shall provide defendant RFG with a copy of “The Franchise Disclosure
 27

28 ³ RFG has stated that it offered to enter into a stipulated protective order but
 is apparently waiting for VIOCF to draft one. [Doc. No. 83, at p. 3.]

1 Document (as referenced in VIOCF document number 000019)” no later than
2 August 15, 2014.

3 4. Defendant RFG’s request for an order compelling Henley to provide a
4 further response and produce documents in response to Document Request No. 57 is
5 DENIED.

6 4. Defendant RFG’s request for an order compelling Henley to provide a
7 further response and produce documents in response to Document Request No. 58 is
8 DENIED.

9 5. Defendant RFG’s request for an order compelling Henley to provide
10 further responses to Document Request Nos. 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, and
11 69 is GRANTED. No later than August 15, 2014, plaintiff Henley shall supplement its
12 responses and produce all documents responsive to Document Request Nos. 59, 60, 61,
13 62, 63, 64, 65, 66, 67, 68, and 69. To the extent any responsive documents are withheld
14 based on a claim of privilege, Henley shall provide defendant RFG with a detailed
15 privilege log no later than August 15, 2014. However, Henley’s production of
16 documents as to Request Nos. 59, 62, 64, 65, and 68 and any supplemental responses
17 to these requests are limited to the time period January 2010 through March 8, 2012.

18 IT IS SO ORDERED.

19 DATED: June 27, 2014

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21 
22 KAREN S. CRAWFORD
23 United States Magistrate Judge
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